

REMARKS

Claims 1, 2, and 5-8 stand rejected under 35 USC 103(a) as being unpatentable over US patent application No. 2003/0112758 (hereinafter Pang) in view of US patent No. 6,434,606 (hereinafter Borella). Reconsideration of the rejections and allowance of all the pending claims is respectfully requested in view of the following remarks.

Claims 3-4, and 9-10 were previously cancelled. Claims 1, 2, and 5-8 remain pending.

M.P.E.P. 2143.03 provides that to establish *prima facie* obviousness of a claimed invention, all the claims limitations must be taught or suggested by the prior art. All words in a claim must be considered for judging the patentability of the claim against the prior art. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending there from is nonobvious.

Claim 1 is directed to a method for regulating a jitter buffer for buffering a data packet stream. Claim 1 recites comparing a currently registered transmission delay with a previously derived weighted mean delay value. Claim 1 further recites determining a weighting of the currently registered transmission delay as a function of a result of the comparing, wherein the currently registered transmission delay is weighted with a first predefined weight value if the currently registered transmission delay is shorter than the previously derived weighted mean delay value and is weighted with a second predefined weight value if the currently registered transmission delay is longer than the previously derived weighted mean delay value, with the first weight value being larger than the second weight value. A quotient of the first predefined weight value and the second predefined weight value is selected to define a tradeoff between a delay introduced by the jitter buffer and a data packet loss rate.

The Office Communication correctly acknowledges that Pang fails to describe or suggest each of the structural and/or operational relationships of the claimed invention. The Office Communication then applies Borella to purportedly correct the deficiencies of Pang. However, as discussed in greater detail below, the Pang/Borella combination fails to constitute a *prima facie* combination under the §103 statutory requirements and this basis of rejection should be withdrawn.

Borella describes a buffer management device 512 for managing a buffer array 514 made up of individual jitter buffers 531, 532 and 533. See FIG. 1 of Borella. Borella further describes selecting a computationally-desirable jitter buffer from the individual jitter buffers that make up

the buffer array based on comparing the respective quality of the individual jitter buffers. See Borella col. 4, lines 3-13. See also abstract of Borella. FIG. 11, as described by Borella at col. 5, lines 3-5, merely shows a graphical representation for selecting the computationally-desirable jitter buffer in the buffer array. As would be appreciated by one skilled in the art, col. 16, line 60 et. seq. of Borella simply acknowledges a consideration that would be generically applicable to any data packet-based communication scheme. Namely, that jitter buffer evaluation is a tradeoff between packet delay, (i.e., buffer depth) packet loss, and bandwidth. However, more importantly, Borella nowhere describes or suggests selecting a quotient of the first predefined weight value and the second predefined weight value to define a tradeoff between a delay introduced by the jitter buffer and a data packet loss rate, as set forth in claim 1. The foregoing structural and/or operational relationships are also not described or suggested by Pang, as discussed in previous responses and supported by the previously submitted declaration of Mr. Wolfgang Bauer. Accordingly, in view of the foregoing considerations, the Pang/Borella combination fails to render unpatentable the claimed invention because it fails to describe or suggest each of the structural and/or operational relationships of the claimed invention. Applicant respectfully submits that on this basis alone the Office Communication has failed to meet the burden required to appropriately establish a *prima facie* case of obviousness. Accordingly, this basis of rejection should be withdrawn. Applicant will discuss below an alternative basis of traversal regarding the Pang/Borella combination.

Applicant in the alternative traverses the rejection since one skilled in the art will appreciate that the Office Communication proposes a combination that would change the principle of operation of the prior art (Borella) and thus consistent with the Examination Procedures set forth in the M.P.E.P. such a reference cannot serve as a predicate for a *prima facie* case of obviousness.

More particularly, MPEP 2143.01(VI) states that if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In this case, combining Pang (dynamically regulating an individual jitter buffer) with Borella (selecting a computationally-desirable jitter buffer from two or more jitter buffers that make up a buffer array) would change the principle of operation described by Borella and

therefore it cannot serve as a predicate for a sustaining a *prima facie* case of obviousness. That is, one skilled in the art would appreciate that Borella's principle of operation is premised on selecting a desirable jitter buffer from a plurality of buffers that make up a buffer array and has essentially nothing to do with the operational and/or structural relationships for regulating any given jitter buffer. Therefore, under this alternative basis of traversal, the Examiner is respectfully requested to abide by the Examination Procedures set forth in the M.P.E.P. and, under either of the foregoing basis of traversal, the Examiner is once again requested to withdraw the rejection of claim 1 and claims depending from such a claim.

Independent claim 6 is directed to a jitter buffer regulating circuit for regulating a jitter buffer for buffering a data packet stream. In view of the foregoing discussion, applicant respectfully submits that the Pang/Borella combination fails to describe or suggest an operational relationship where a quotient of the first predefined weight value and the second predefined weight value is selected to define a tradeoff between a delay introduced by the jitter buffer and a data packet loss rate, as set forth in claim 6. Accordingly, Pang fails to render unpatentable claim 6, and this rejection should also be withdrawn.

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Conclusion


It is respectfully submitted that each of the claims pending in this application recite patentable subject matter and it is further submitted that such claims comply with all statutory requirements and thus each of such claims should be allowed.

The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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